

**Sheet Metal Workers Local Union 156, AFL-CIO  
and Martin, Inc. and Trio Industries, Inc. and  
International Association of Bridge and Structural  
Iron Workers, Local 147, AFL-CIO.  
Case 25-CD-212**

November 18, 1982

**DECISION AND DETERMINATION OF  
DISPUTE**

**BY CHAIRMAN VAN DE WATER AND  
MEMBERS FANNING AND ZIMMERMAN**

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Martin, Inc., alleging that Sheet Metal Workers Local Union 156, herein called the Respondent or Sheet Metal Workers, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer, Trio Industries, Inc., to assign certain work to its members rather than to employees represented by International Association of Bridge and Structural Iron Workers, Local 147, AFL-CIO, herein called the Iron Workers.

Pursuant to notice, a hearing was held before Hearing Officer John Petrisson on June 19, 1981. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

**I. THE BUSINESS OF THE EMPLOYER**

The parties stipulated,<sup>1</sup> and we find, that the Employer, a Connecticut corporation with its principal place of business in Shelton, Connecticut, is engaged in commercial construction. During the past year, the Employer received goods and materials valued in excess of \$50,000 at its jobsites directly from suppliers located outside the State where said jobsites were located. We find that the Employer is engaged in commerce within the meaning of Sec-

<sup>1</sup>The commerce data pertaining to the Employer was inadvertently omitted at the hearing. Thereafter on August 28, 1981, the parties executed a formal stipulation as to these facts and further stipulated that the Employer was engaged in commerce within the meaning of the Act.

tion 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

**II. THE LABOR ORGANIZATIONS INVOLVED**

We find that Sheet Metal Workers Local Union 156, AFL-CIO, and International Association of Bridge and Structural Iron Workers, Local 147, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

**III. THE DISPUTE**

*A. Background and Facts of the Dispute*

Trio Industries, Inc., the Employer, was hired as a subcontractor to install all of the windows and the finish metal work in a building being constructed at One Summit Square. The finish metal work consists of all the entrances, revolving doors, and grillwork. The grill is an ornamental one about 12 inches wide and 40 feet long with bars spaced half an inch apart. Under the grill is a four-coil fan unit which occupies 15 percent of the area, the rest of which is empty space. Approximately 117 feet of grill will be installed on each of 28 floors.

The Employer has had a collective-bargaining agreement with the Iron Workers since 1947 and has used employees represented by the Iron Workers to install grills for over 24 years. Consistent with its past practice, the Employer assigned this work to its employees represented by the Iron Workers.

In February 1981, the local business agent for the Sheet Metal Workers approached Trio's field superintendent, Joseph Noonan, and asked him "who was installing the grills?" Noonan replied that he would use ironworkers and, when questioned "Why," responded that the Company had had an agreement with the Iron Workers since 1947 and had always used them to install grills. In April, the general contractor's superintendent was advised that the Sheet Metal Workers was going to picket the job if Trio used ironworkers. Also in April, Noonan received a copy of a request for a hearing before the Impartial Jurisdictional Disputes Board (IJDB). By letter Loren Cheney, Trio's erection manager, responded to the request for hearing by stating that he "would in no way" give up any part of the work to the Sheet Metal Workers. On April 24, 1981, the IJDB voted to award the work in dispute to the Sheet Metal Workers on the basis of trade practice. Trio and Iron Workers Local 147 ignored this award because neither had agreed to submit the dispute to the IJDB nor had participated in the IJDB proceeding.

On May 20, pickets appeared at the jobsite with signs stating that the Iron Workers was unfair to the Sheet Metal Workers. Employees represented by the Iron Workers continued to install the grills for the next 5 or 6 days; however, the rest of the job was shut down during this period as none of the other unions would cross the picket line. On May 22, Martin, Inc., another subcontractor on the job, filed the instant charge.

#### *B. The Work in Dispute*

The work in dispute involves the installation of grillwork at the construction site located at One Summit Square, Fort Wayne, Indiana.

#### *C. The Contentions of the Parties*

The Employer contends that the work should be assigned to employees represented by Iron Workers Local 147, on the basis of the collective-bargaining history, area and industry practice, Company practice, relative skills involved, efficiency of operation, and employer preference. The Sheet Metal Workers contends that the ruling of the IJDB is binding. The Iron Workers contends that the Employer's assignment of the work should be upheld.

#### *D. Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that (1) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and (2) the parties have not agreed upon a method for the voluntary adjustment of the dispute. It is clear that the picketing at the jobsite was to protest the Employer's assignment of the disputed work to its employees represented by the Iron Workers and to force the Employer to assign the work to employees represented by the Sheet Metal Workers. Accordingly we find that reasonable cause exists to believe that Respondent violated Section 8(b)(4)(D) of the Act.

The Sheet Metal Workers contends that an agreed-upon method for voluntary adjustment of the dispute exists because the Employer voluntarily submitted itself to the jurisdiction of the IJDB by writing a letter in response to the notice of hearing. The Employer and the Iron Workers assert that the decision is not binding as to them because neither had agreed to submit the dispute to the IJDB nor had participated in that proceeding.

We find no merit in the Sheet Metal Workers claim that the Employer agreed to be bound by the procedures of the IJDB. The record shows that the collective-bargaining agreement between Trio and the Iron Workers specifically disclaims reliance on

the mechanism of the IJDB. Accordingly, we conclude that there is no agreed-upon method for settlement of the dispute that is binding on all parties and that this dispute is, therefore, properly before the Board for determination.

#### *E. Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various relevant factors. The following factors are relevant in making the determination of the dispute before us:

##### *1. Area and employer past practice*

The employees represented by the Iron Workers have installed the same type of grill for Art Iron at a Fort Wayne public library and a junior high school. Art Iron had also used Fort Wayne ironworkers to install that type of grill in Lima, Wapakoneta, and Defiance, Ohio. The Sheet Metal Workers entered no evidence of area practice at the hearing. For the past 24 years the Employer has assigned the installation of grillwork exclusively to employees represented by the Ironworkers. Area and employer past practice, therefore, favor an award to those employees.

##### *2. Economy and efficiency of operations*

Employees represented by the Iron Workers perform work for the Employer other than that which is in dispute. As a result the Employer is able to interchange employees between grillwork and other metal finishing work and perform both the disputed and other work with one work force. Furthermore, since the Employer performs no sheet metal work, an award of the work to employees represented by the Sheet Metal Workers would appear to require the Employer to hire two work complements. Therefore, economy and efficiency of operations favor an award to employees represented by the Iron Workers.

##### *3. Employer assignment and preference*

The Employer has assigned the work in dispute to employees represented by the Iron Workers and has expressed the preference that the disputed work be performed by those employees. We find that the Employer's assignment and performance favor an award of the disputed work to employees represented by the Iron Workers.

#### *Conclusion*

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees represented by the Iron

Workers are entitled to perform the work in dispute. In making this determination, we are awarding the work in question to employees who are represented by the Iron Workers, but not to that Union or its members. Accordingly, the present determination is limited to the work being performed by the Employer at One Summit Square in Fort Wayne, Indiana.

#### DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Trio Industries, Inc., who are represented by International Association of Bridge and Structural Iron Workers, Local 147, AFL-

CIO, are entitled to perform the installation of grillwork at the construction site located at One Summit Square, Fort Wayne, Indiana.

2. Sheet Metal Workers Local Union 156, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Trio Industries, Inc., to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, Sheet Metal Workers Local Union 156, AFL-CIO, shall notify the Regional Director for Region 25, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.